



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

On June 12, 2017, The Tenant applied for Dispute Resolution seeking a monetary order for money owed or compensation for damage or loss under the *Act*, and for the return of the security deposit.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Parties identified that the Landlords name within the Tenant's Application is incorrect. The Landlord confirmed the spelling of her name and the Tenant agreed to amend the spelling of the Landlords name in her application. I have amended the style of cause accordingly.

### Issues to be Decided

- Is the Tenant entitled to the return of double the security deposit?
- Is the Tenant entitled to other compensation under the Act or tenancy agreement?

### Background and Evidence

The Parties testified that the Tenant paid a security deposit and rent to the Landlord on May 17<sup>th</sup> for a tenancy that was to begin on May 31, 2017. Rent in the amount of \$550.00 was due by the first day of each month. The Tenant paid the Landlord a security deposit of \$280.00.

The Tenant testified that she moved her possessions into the rental unit on May 31, 2017. At that time she discovered that the only control for the heat was located upstairs in the Landlord's part of the rental property. She testified that the control of the heat was not acceptable for her and she asked the Landlord if she could end the tenancy and move out. The Tenant testified that the Landlord told her she could pay \$20.00 for the one night and have a refund of the remainder of her rent.

After the Tenant moved out, she asked the Landlord to return the remainder of the rent and the security deposit and the Landlord refused.

With respect to the security deposit, the Tenant testified that she never provided her forwarding address to the Landlord in writing. She testified that she sent a text message asking the Landlord to return the security deposit. She testified that there was no agreement that the Landlord could keep the security deposit.

The Tenant provided a copy of text messages that the parties sent back and forth. The Tenant submits that the text messages show that there was an agreement that the Landlord permitted her to move out and that she would return the rent to her.

In response, the Landlord testified that the Tenant viewed the rental unit prior to agreeing to the tenancy. The Landlord testified that the Tenant needed time to think about it and subsequently texted her and said she would take the unit.

The Landlord testified that the Tenant sent her the security deposit and first month's rent on May 17<sup>th</sup>, and she moved into the unit on May 31, 2017.

The Landlord testified that she never agreed that the Tenant could have the rent refunded to her if she moved out. The Landlord testified that she contacted the Residential Tenancy Branch for information regarding the end of the tenancy and she was informed that she was entitled to keep the rent.

The Landlord testified that she attempted to rent the unit out for the months of June and July but could not find a Tenant.

The Landlord testified that she did not return the security deposit because the Tenant failed to provide her with her forwarding address in writing.

The Landlord submitted that she did not reach an agreement using text messaging that she would return the rent to the Tenant.

### Analysis

Section 16 of the Act states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 44 of the Act states that a tenancy ends if a Landlord and Tenant agree in writing to end the tenancy.

Section 45 of the Act stipulates that a Tenant may end a tenancy by giving one months' notice in writing.

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

I find that the parties entered into a tenancy agreement on May 17, 2017, when the Tenant agreed to take the unit and paid the security deposit and rent. The Landlord and Tenant had rights and obligations under the Act as of that date.

I find that there was no written agreement between the parties to end the tenancy. The documentary evidence of text messages from the Tenant does not establish that the Landlord agreed to end the tenancy with the Tenant and return the rent.

The Tenant failed to provide one months' notice to end the tenancy to the Landlord and the Landlord testified that she was not able to rent the unit out for the month of June 2017. I find that the Landlord has the right to retain the rent payment of \$550.00 that she received from the Tenant.

With respect to the security deposit, I find that the Tenant did not provide her forwarding address in writing to the Landlord. I find that the Landlord has 15 days from the date she receives the Tenant's forwarding address to return the deposit or to apply for dispute resolution to keep it.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was not successful with her claim, and since the Landlord was not in breach of the Act, I am not ordering the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

### Conclusion

The Tenants application for a monetary order to recover rent and for the return of the security deposit was not successful.

The parties entered into a tenancy and the Tenant did not end the tenancy in accordance with the Act.

The Tenant has leave to reapply for the return of the security deposit if the Landlord fails to return it or apply to keep it within 15 days of receiving the Tenant's forwarding address.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 22, 2017

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Residential Tenancy Branch